IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.46/2004

1. Smt. Vaijayanti Krishna Khandolkar,
   @ Surekha Suresh Kakodkar,
   daughter of late Rukmini Krishna
   Khandolkar, and her husband,

2. Shri Suresh Baban Kakodkar,
   both resident of Madhegal Kakoda,
   Curchorem, Goa. ..... Appellants.

V/s.

1. Shri Harischandra K. Khandolkar,
   son of Krishna J. Khandolkar,
   near Bishop Well, St. Inez, Panaji, Goa.

2. Shri Jaiprakash Harischandra
   Khandolkar @ Candolkar son of
   Harischandra Krishna Khandolkar,
   and his wife;

3. Smt. Tejaswati Jaiprakash Khandolkar,
   both of them resident of St. Inez,
   near Bhishop Well, Panaji, Goa.

4. Smt. Smita Jaiprakash Pednekar,
   daughter of Harischandra K.
   Khandolkar, married, and her husband

5. Dr. Jaiprakash Pednekar,
   both of them resident of Goa
   Medical College Complex,
   Bambolim, Goa.

6. Smt. Sujata Praveen Verekar,
   Daughter of Harischandra K. Khandolkar,
   married, and her husband;

7. Shri Praveen K. Verekar,
both of them resident of La Campala
Colony, Miramar, Panaji, Goa.

8. Shri Mahesh Harischandra
Khandolkar son of
Harischandra Krishna Khandolkar,
@ Candolkar and his wife;

9. Smt. Amita Mahesh Khandolkar,
both of them resident of St. Inez,
Panaji, Goa.

10. Shri Virendra Krishna Khandolkar,
son of Krishna Khandolkar and
his wife.

11. Smt. Neharika Virendra Khandolkar,
both of them resident of Mala,
Fontainhes, Panaji, Goa.

12. Shri Krishna Jairam Khandolkar,

13. Smt. Satyvati Krishna Khandolkar,

14. Smt. Rukamini Krishna Khandolkar,
(12, 13 and 14 are deceased). ..... Respondents.

Shri D. P. Bhise, Advocate for the appellants.

Shri M.S. Usgaonkar, Sr. Advocate with Mr. I. Agha, Advocate for respondents No.1 to 9.

CORAM : S.S. PARKAR, J.

DATE : 20TH JULY, 2005.

ORAL ORDER :

This appeal is filed challenging the order passed by the Civil Judge, Senior Division, Panaji on 17.7.2004, after the remand order was passed by this Court on 22.8.2002 in Appeal from Order No. 36/2002.

2. The appellant No.1 had initiated Inventory Proceedings No.81/96/A before the trial Court. That was disposed of by order dated 27.12.2000 by the trial Court holding that the assets mentioned in the deed of partition dated 12.11.1964 cannot be listed in the inventory proceedings and in case the correctness of the deed is disputed, the remedy has to be sought in the Civil Court in view of Article 1380 of the Procedure Code and 2087 of the Code in force. It was further held that since there is no dispute over the fact that all the assets are in possession of the interested party Harischandra i.e. respondent No.1 herein, in terms of Article 2068 (2) read with 2070, the interested party had to be appointed as Cabesa de Casal with respect to the house property i.e. Item No.3, which was a landed property. By the said order, it was further held that the inquiry should be held on the limited aspect to find out whether the house property at Item No.3 is part of Item No.2. That order was impugned in

this Court in Appeal from Order No.36/2002, which was disposed of by passing the following order :

> "Heard learned counsel for the appellants and learned counsel for the respondents. Perused the impugned order dated 27th December, 2000, whereby the learned Civil Judge, Senior Division, Panaji, has directed a limited enquiry to find out whether item no.3, namely the house bearing No.5/57/10 situated at Mala, Panaji, Goa, forms part of a property known as "Palmar Ponte of Panaji" shown as item No.2. Admittedly, the deed of declaration does not clearly set out whether it forms part of the property "Palmar Ponte of Panaji".
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> 2. According to the respondents the said item no.3 forms part of Item No.2. In any event, this issue will have to be resolved finally in the limited inventory proceedings. I do not find any illegality or perversity in the order passed by the learned Civil Judge, Senior Division, Panaji, Goa, directing such limited enquiry as indicated herein.
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> 3. Under these circumstances, there is no merit in this Appeal from Order. Appeal from Order stands dismissed. All contentions of both the parties are kept open."

3. Thereafter, the matter was again taken up before the trial Court for finally resolving in the inventory proceedings whether the house property at Item No.3 formed part of Item No.2. Before the trial Court, the appellants made an application dated 5.9.2002 and raised various contentions, including the contentions which were decided by the earlier order dated 27th December, 2000 and confirmed by the High Court in its Order dated 22.8.2002.

4. After the remand, the trial Court rightly did not venture to decide all the questions raised by the appellants which were decided by the earlier order of the trial Court and confirmed by the High Court in Appeal from Order as the High Court had remanded the matter for decision only on the limited aspect whether the house property at item No.3 was part of the property at item No.2. That question having been conceded by the appellants, there was no question of the trial Court deciding the same again, which was also the contention of the respondents. Against the said order, the present appeal has been filed and it is contended that the trial Court ought to have allowed the appellants to raise all the issues on the ground that the previous order of this court dated 22.8.2002

had kept all the contentions of both the parties open in the operative part of the order. The other points having been decided by the earlier order and the appeal having been dismissed by this Court expressly stating that this Court did not find any illegality or perversity in the order passed by the trial Court and directing the limited inquiry as aforesaid, about the house property, the trial Court was right in disallowing the appellants from raising those questions again. The operative part of the previous order of this Court, “keeping all the contentions of both the parties open”, was made with reference to the suit that may be filed by the appellants in the Civil Court and was not meant to allow the appellants to raise the said contentions again in the inventory proceedings. Thus, the question which was remitted to the trial Court having been conceded and admitted by the appellants, the trial Court could not have disposed of the application except by dismissing the application of the appellants. The reliance placed by the appellants on the Judgment of this Court in the case of **Smt. Khairumissa Bi and ors. vs. Sayad Mohammed,** (1989 (1) Goa L.T. 203) is of no assistance to them.

5. In the aforesaid circumstances, I find no illegality in

the impugned order. Hence, this appeal is dismissed.

S.S. PARKAR, J.

ssm